IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1792 of 1978

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL PRAHLADBHAI VITHALDAS - Petitioner(s)

Versus

STATE OF GUJARAT NOTICE SERVED UPON & 1 - Respondent(s)

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Appearance :

MR BD KARIA for Petitioner(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 12/01/2006

ORAL JUDGMENT

1.In the present petition, the petitioner has challenged an order dated 05-07-1978 passed by the Special Secretary, Revenue Department, Government of Gujarat. Earlier by an order dated 01-07-1977,the Collector

Mehsana had granted a piece of land of survey no. 1 Tika No. 8/8 paikee of Visnagar to the petitioner for setting up a small scale industry. The respondent no.2 was also interested in the same land, filed a revision application before the State Government against the order passed by the Collector. The revision application was substantially allowed. By the impugned order dated 05-07-1978, Special Secretary was pleased to cancel the order passed by the Collector. It was further observed that the petitioner had not pointed out the background of the past litigation before the Civil Court. It was observed that the learned District Judge has not accepted the case of the petitioner and by an order dated 07-05-1977, vacated the injunction which was granted in favour of the petitioner. It was also observed that respondent no.2 had shown interest in being granted the same land. It was observed that the petitioner as per the observations of the Assistant Judge had tried to illegally occupy the suit land. The Special Secretary, therefore, observed that such land even if was to be allotted to any individual, same should have been divested after holding a public auction. Therefore, after quashing the order passed by the Collector, it was directed that if any person is unauthorisedly occupying the land, such a person should

be evicted and if it is found that the land is not required for public purpose by Nagarpalika, same should be disposed of through auction.

2. The petitioner has not been able to dispute that he had initiated certain civil litigations, but had failed in getting interim protection. In any case, respondent no.2 had also shown interest for being granted the land in question. Without considering the effect of such factors, if the Collector passes an order in favour of the petitioner, I do not find that Special Secretary committed any illegality in setting aside such an order. Particularly when the interest of the public exchequer is taken care of by providing that such land even if is required to be divested should be allotted through a public auction, I do not see any possibility of interference in exercise of powers under Article 226 of the Constitution of India.

3. Pursuant to the observations made by the Special Secretary, the Collector shall examine the question whether the land is to be allotted to any applicant from the public and whether for the said purpose, it is necessary to hold an auction. Until such time such a decision is taken, status-quo as on today will be

maintained.

4.In the result, the petition fails, is hereby rejected. Rule is discharged. Interim relief is vacated.

(Akil Kureshi,J.)

(raghu)